



California Fair Political Practices Commission

August 29, 1989

Axel E. Christiansen
City Attorney
City of Madera
205 West 4th Street
Madera, CA 93637

Re: Your Request for Advice
Our File No. A-89-422

Dear Mr. Christiansen:

You have been authorized to seek advice on behalf of Mr. Alan Brown, Mayor of the City of Madera, regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. May Mayor Brown participate in the selection of a site for a bridge over the Fresno River?
2. May Mayor Brown participate in decisions relating to the alignment of collector streets for the bridge?

CONCLUSIONS

1. Mayor Brown may participate in decisions relating to the selection of a site for the bridge crossing even if the effect on his property is material, because the effect is the same as that on the public generally.
2. Mayor Brown may participate in decisions relating to the alignment of collector streets unless the decisions would increase or decrease the value of his property by \$10,000 or more.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

FACTS

According to the facts you have provided, the Madera City Council is contemplating a decision to construct another bridge across the Fresno River. The river bisects the city on its northerly side, and the need for an additional crossing has long been recognized. The council must decide on a location for the bridge and determine which street will be the major thoroughfare for traffic between the bridge and Sunset Avenue, the first major street south of the river.

The general plan adopted by the city provides for a collector street known as Schnoor Avenue to end at the river and a continuation of that street is depicted on the opposite side of the river. You indicate that this implies a Schnoor Avenue river crossing. Also you state that previously approved environmental impact reports show a crossing at Schnoor Avenue.

In connection with proposed amendments to the general plan, possible realignment of streets from the Schnoor Avenue crossing, or possible relocation of the crossing, have been discussed. The planning commission has made no recommendation in the matter and has forwarded the matter to the city council for consideration.

The location of the bridge, and particularly the issue of designating a collector street to carry traffic to Sunset Avenue, have generated a great deal of controversy. The current residents of Schnoor Avenue are adamant against using their street as the collector street as are the residents who live on streets suggested as alternate or additional collector streets, such as Shannon Avenue, Mainberry Drive and Orchard Avenue.

Mayor Brown lives on Orchard Avenue, which is two blocks east of Schnoor Avenue and approximately five and a half blocks south of the river. The mayor's investment in his residence is in excess of \$1,000. Three other council members live in the same general area, although, according the map provided, their residences are located south of Sunset Avenue.

You indicate that the mayor has made it known that he favors the river crossing at Schnoor Avenue and the continued maintenance of Schnoor Avenue as the collector street. Allegations are now being made that the mayor has a conflict of interest because he resides on Orchard Avenue. Some members of the community have requested that he disqualify himself from participating in the decisions. You have attached a letter and legal analysis from Herbert E. Bartow, a Madera attorney, a comment addressed to the council from William B. Pitman, and a memorandum from Gary Oberti.

ANALYSIS

The following advice relates only to future decisions regarding the location of a proposed crossing and alignment of collector streets. We cannot advise the mayor with respect to any past conduct in which he might have engaged prior to seeking this advice. (Regulation 18329(c) copy enclosed.)

Section 87100 prohibits public officials from making, participating in, or using their official position to influence any governmental decision in which they know or have reason to know they have a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his or her immediate family, or on "any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more." (Section 87103(b).)

An official makes a governmental decision when he votes, commits his agency to a course of action, enters into a contract, or appoints someone. (Regulation 18700(b), copy enclosed.) The city council will be voting on the location of the river crossing and on the designation of a collector street for traffic to and from the bridge. Therefore, if the mayor participates in the actions of the city council concerning the river crossing, it is clear that he will be making a governmental decision. He is a public official under the Act. (Section 82048; Regulation 18700(a).)

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however, certainty is not required. (Downey Cares v. Downey Development Com. (1987) 196 Cal.App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal.App.3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).) The Act seeks to prevent more than actual conflicts of interest; it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

You indicate in your letter that it is not clear whether the location of the bridge and the street alignment will have any foreseeable financial effect on the mayor's property. You believe that the effect is uncertain because of the distance of Orchard Avenue from possible sites, existence of other streets connecting to Sunset Avenue south of the river and because Orchard Avenue does not have direct access to the river.

Whether the decision will have a foreseeable effect on the mayor depends upon whether there is a substantial likelihood that the decisions of the city council will affect the mayor's property. The decisions involve a possible relocation of the bridge and the possible realignment of the streets with respect to the designation of a collector street for traffic from the bridge to Sunset Avenue. Since Orchard Avenue could be a possible choice for a collector street, it is foreseeable that the decisions may have a financial effect on the mayor's property.²

Material Financial Effect

Once it is determined that a decision may have a financial effect upon the mayor, it is necessary to determine whether the effect of the decision is material. You have indicated that the distance between the mayor's property and the riverbank at Schnoor Avenue is approximately 1700 feet, and that this point is the closest foreseeable river crossing location in relation to the mayor's property. Regulation 18702.3 (copy enclosed) provides, in part, as follows:

(a) The effect of a decision is material as to real property in which an official has a direct, indirect or beneficial ownership interest (not including a leasehold interest), if any of the following applies:

* * *

(3) The real property in which the official has an interest is located outside a radius of 300 feet and any part of the real property is located within a radius of 2,500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the decision and the decision will have a reasonably foreseeable financial effect of:

(A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or

(B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

Regulation 18702.3 (a)(3).

² We have received the letter from Mr. Bartow dated August 7, 1989. We cannot determine the accuracy of remarks that the mayor may have made concerning the potential effect on his property. However, those statements are not determinative of the conflict-of-interest issues.

Therefore, with respect to the choice of Schnoor Avenue as the location of the bridge across the Fresno River, the mayor may participate in site selection unless the decision will increase or decrease the fair market value of his property by \$10,000 or more.

Whether to follow the existing general plan designation of Schnoor Avenue as the primary collector street for bridge traffic or to in some way divert the traffic to other streets is a separate question. Here, there are some indications that the street where the mayor resides, Orchard Avenue, might experience an increase in traffic depending upon which way the streets are aligned from the bridge. Regulation 18702.3(c) states that the appropriate measure for materiality when there is no specific subject property from which to measure is the test in Regulation 18702.3(a)(3), set forth above. Therefore, the mayor may participate in decisions relating to the street alignment unless it will affect the fair market value of this property by \$10,000 or more.

"Public Generally" Exception

Even if it is ascertained that the effect of the decision in question will be material, the mayor may still be able to vote if the effect on his property is not distinguishable from the effect on the public generally. (Section 87103.) Regulation 18703 (copy enclosed) provides, in part:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public.

The "public" is all the persons residing, owning property, or doing business in the jurisdiction of the agency in question. (In re Legan (1985) 9 FPPC Ops 1, copy enclosed.) In the case of the city council, this would be the entire city. The Commission has never adopted a strict arithmetic test for determining what constitutes a significant segment of the public. However, in order to apply the public generally exception, the population affected must be large in number and heterogeneous in nature. (In re Ferraro (1978) 4 FPPC Ops 62, copy enclosed.)

It is true, as you have suggested, that the construction of a bridge will potentially have an impact on a large segment of the public west of U.S. 99 and south of the Fresno River. Information supplied by your staff in a telephone conversation of August 21st

indicates that the area benefitting from the bridge constitutes a significant segment of the population of Madera. The current population of the city is approximately 27,301. The current population of the area served by the new bridge is estimated to be about 6,700.³ Furthermore, the area appears to be largely residential as is the mayor's property. Therefore, selection of a site for the bridge would not appear to affect the mayor in a manner different from the public generally.

However, it would appear that those individuals residing or owning property on streets used as collector streets for bridge traffic are affected differently, and the number of individuals affected by any one choice would not be large. Thus, in regard to decisions about the configuration of collector streets, the public generally exception would not apply.

If you have any questions regarding the above, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

KED/MWE/aa

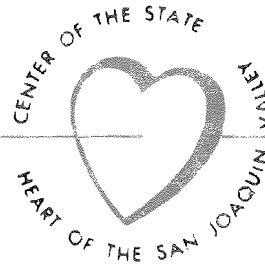
Enclosures

³ The estimate is based upon a conservative prorated update of 1980 census data for the area extending south of river to Howard Road and between the two current bridges at Granada and Highway 99. This estimate does not include persons residing east of Highway 99 who may use the bridge to reach industrial and commercial areas south of the river. Nor does it include currently planned and proposed residential developments located immediately north and south of the river in the area where the bridge would be located.

City of Madera

CITY HALL
205 WEST 4TH STREET

MADERA, CA 93637



July 13, 1989

DEPARTMENT Legal
(209) 673-8084

Ms. Kathryn Donovan
Legal Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Re: Request for Opinion

Dear Ms. Donovan:

On July 7, 1989, the City Council of the City of Madera, and Mr. Alan Brown, Mayor of the City of Madera, authorized and directed me to submit a request for an opinion from your offices relative to an alleged conflict of interest of Mayor Alan Brown.

Mr. Alan Brown resides at 817 Orchard Avenue, Madera, California 93637. He is retired.

The pertinent facts relative to this inquiry are as follows:

The City of Madera is a general law city located approximately 22 miles north of Fresno in the San Joaquin Valley. The Fresno River bisects the City on its northerly side, the river being traversed on the east side of U.S. 99 by three bridges; there is a bridge over U.S. 99, and on the west one river crossing over Granada Drive.

The need for an additional river crossing to the west of Highway 99 between the highway bridge and Granada Drive has long been recognized and the City has, in adoption of its General Plan, provided for a collector street known as Schnoor Avenue to end at the river and a continuation of that street depicted on the opposite side of the river, implying a Schnoor Avenue river crossing. Environmental impact reports approved many years ago in fact show a crossing of the river at Schnoor Avenue location, but for whatever reason the matter has now been raised for further consideration by the

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Planning Commission and the City Council. Maps depicting the general area involved and the specific area in question, and the map from the approved EIR for the General Plan are enclosed for your edification.

In connection with proposed amendments to the City of Madera General Plan, possible realignment of streets from the Schnoor Avenue crossing, or possible relocation of the crossing at an area other than at Schnoor Avenue, have been discussed, both at the Planning Commission and City Council level. The Planning Commission failed to make any recommendation and the matter forwarded to the Council for its consideration.

The issue of streets connecting from any Fresno River crossing to the next major street in the city, to wit Sunset Avenue, has created a great deal of controversy, the residents on Schnoor Avenue being particularly adamant about utilization of their street (which is already designated as the collector street) as the major street from the river crossing to Sunset Avenue. The same attitude has prevailed among other citizens in connection with traffic along their streets, e.g. Shannon Avenue, Mainberry Drive and Orchard Avenue, although Orchard could not be extended directly across the river.

Mayor Brown lives on Orchard Avenue, which is two blocks east of Schnoor Avenue and approximately five and a half blocks south of the river. Three other council members live in the same general area and the location of the residences of the mayor and the three other council members are earmarked on the attached specific map, location "M" being Mayor Brown's property, and numbers 2, 3 and 4 indicating the residences of other council members. The location of the property of the fifth council member is not relevant.

Apparently Mayor Brown has made known his position favoring the river crossing at Schnoor Avenue and the continued maintenance of Schnoor Avenue as a collector

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street. As a result, allegations have been made by parties supporting a change in the Schnoor Avenue status and possible relocation of the river crossing that Mayor Brown has a conflict of interest in considering either the location of the bridge, or possible changes in the designation of streets onto which traffic may flow if and when a bridge is constructed, whether it be aligned with Schnoor Street or at some other location, because he resides on Orchard Avenue.

Some residents of the Schnoor Avenue area, including an attorney, have communicated with the Council. I am enclosing a copy of a letter of July 3, 1989 from Mr. Herbert E. Bartow, Attorney at Law, setting forth his contentions, along with his research on the subject, and letters from Mr. William Pitman and Gary Oberti. The Mayor denies any specific protectionist attitude regarding Orchard Avenue, stating his concern is for the best solution to the impact of a bridge on all streets in the area feeding onto Sunset Avenue.

As stated and shown on the maps, the Mayor owns his residence at 817 Orchard Avenue. His investment in his residence is more than \$1,000.00 in value. Presumably property of Council Members 1, 2 and 3, whose properties are marked on the specific map, constitute investments greater than \$1,000.00.

It is not known what, if any, financial effect there may be on any real property of the mayor or other Council Members in connection with the ultimate decision concerning the location of the bridge or streets leading from it to the south, than can be or is distinguished from the effect on the public generally in the area where the improvements are ultimately placed.

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It may or may not be reasonably foreseeable that the ultimate location of a bridge over the Fresno River and alignment of streets to the south will have any financial effect on property located in the area in question, i.e. property values may increase because of improved access to newly developed commercial areas or be adversely affected as a result of traffic impacts. It is argued that it is not reasonably foreseeable that there will be any financial effect on Orchard Avenue because of its distance from possible sites, existence of other streets connecting to Sunset south of the river and because Orchard Avenue, as contrasted with Schnoor, Mainberry and Shannon, does not have direct access to the river.

However, assuming a financial affect on Mayor Brown's property, in which it is conceded he has a financial interest, it is not reasonably foreseeable that there would be a material financial effect, i.e. an increase or decrease in the fair market value of the property by \$10,000.00 or a lesser amount equal to .005% of an effect of one thousand dollars or more.

Also, assuming a financial effect upon Mayor Brown's property interests, it appears that such effect is not distinguishable from the effect on the public generally in that the nature of the decisions involved here concern the general public in the entire neighborhood west of U.S. 99 and south of the Fresno River. If the matter at issue involved zoning, or conditional use, or taxes or similar impacts upon property near a public official's property, such actions would be distinguishable from the effect on the general public, but such appears not to be the case in decisions involving a substantial quadrant of the City.

Based on the foregoing and your analysis thereof, would you please advise whether Mayor Brown may participate in any

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decision as to the location of a bridge over the Fresno River, or any decision relative to alignment or location of streets from any bridge to Sunset Avenue to the south?

If any further information is needed, please contact the undersigned.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Axel E. Christiansen".

AXEL E. CHRISTIANSEN

AEC:jan

Enclosures

HERBERT E. BARTOW, INC.

ATTORNEY AT LAW

123 EAST 4TH STREET

MADERA, CALIFORNIA 93638

TELEPHONE (209) 674-8588

July 3, 1989

Madera City Council
205 West 4th Street
Madera, California 93637

Re: Conflict of Interest of Alan Brown

Dear Council Members:

Some time ago I heard reports that Mayor Alan Brown, who resides at 817 Orchard Avenue just one street east of Schnoor, had made a number of statements indicating that his primary concern about the location of a bridge over the Fresno River and the routing of traffic from that bridge south was the impact it would have on Orchard Avenue.

I then researched the question of whether such a personal interest on the part of Mr. Brown constitutes a conflict of interest which would bar him from participating as a councilman in hearings, discussions, or decisions concerning those two subjects. I enclose a copy of my legal memorandum.

I informed City Attorney, Axel Christiansen, of the reports I had heard and gave him a copy of my memorandum, which I understand he communicated to Mr. Brown.

Nevertheless, Mr. Brown continued to participate in discussions and hearings concerning the matter, and in fact in a straw vote of the Council on June 19, 1989, cast the deciding vote against a perfectly reasonable plan proposed by a cross section of citizens from the affected area.

Since then I have confirmed with citizens who are prepared to testify under oath that Mr. Brown had indeed expressed that his primary interest on the issue of bridge location and road alignment was to minimize the traffic impact on his street. In fact at a Council meeting in March of 1989 when the two subjects were being discussed, Mr. Brown stated that he did not care where the bridge went as long as it isn't at the end of Orchard. It is reported that he then quickly covered his mouth with his hand in a "Oops, I guess I shouldn't have said that" manner.

In addition, I have a report that at a meeting in the City Hall conference room in April of 1989, Mr. Brown requested developer Jerry Venturi to develop a road

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connecting Riverview Drive to Schnoor, and directed Planning Director Leona James to draw up plans to that effect so as to encourage traffic to use Schnoor instead of Orchard.

I have also heard reports that Mr. Brown met almost continuously with the City Planning staff and may have attempted to influence them to act and make recommendations consistent with his personal desire to locate the bridge and roads in a manner that would have the least impact on Orchard.

I was hopeful that Mr. Brown would voluntarily disqualify himself as Planning Commissioner Schmidt did because he also had a personal interest in the subject (just the opposite of Mr. Brown's) but he has failed to do so.

It seems very clear to me from the facts and the applicable law set forth in my memorandum that Mr. Brown has a conflict of interest which bars him from participating in the issues of bridge location and road locations, and I request that he voluntarily disqualify himself.

If Mr. Brown declines to disqualify himself, I ask that the Council forward a copy of this letter and attached memorandum to the Attorney General and the Fair Political Practices Commission with a request for an opinion.

Very truly yours,



Herbert E. Bartow
816 Schnoor
Madera, California

HEB:kg

cc: Alan Brown
Robert Garibay
William Weber
Pat O'Rourke
Nick Pavlovich, City Administrator
Axel Christiansen, City Attorney

THE COMMON LAW OF CONFLICT OF INTEREST

In 26 Ops. Cal. Atty. Gen. 5 (1955) the question was whether a supervisor could participate in the deliberations and decision of the Board regarding the relocation of a county road where the supervisor owned property traversed by one of the two routes. The Attorney General held that he could not, stating as follows:

"The question which arises at this point is whether the supervisor who owns the affected land may participate in the prior deliberations and decision concerning the route the relocated road is to take. It is obvious that this decision will directly affect a private interest of the supervisor; that is, whether or not his land will be condemned by the county. While Government Code Section 1090 does not forbid his participation, since the section is restricted to activities of a contractual nature, the common law rule on which it is based is not so limited. The objective of the common law rule is to prevent public officers from acting in circumstances in which their public duty might conflict with their substantial private interest."

As was stated in Noble v. City of Palo Alto (1928) 89 CA 47, 264 Pac 529:

"There is neither a more wholesome nor a sounder rule of law than that which requires public officers to keep themselves in such a position as that nothing shall tempt them to swerve from the straight line of official duty. Officers ought not to be allowed to place themselves in a position in which personal interest may come into conflict with the duty which they owe to the public. The rule which has so long prevailed is eminently just (Stropes v. Green Co. 72 Ind. 42)."

We are of the opinion, therefore, that the interested supervisor is disqualified from taking any part in the discussion and vote regarding the selection of the route for location of the road.

In 58 Ops. Cal. Atty. Gen. 345, 354-355 (1975) it is stated as follows:

"We turn to a consideration of the common law of conflict of interest which we find applicable. It was stated in 42 Ops. Cal. Atty. Gen. 151 at 155 (1963): 'The courts have made clear that even though a specific conflict of interest situation does not come within the statutory proscription -- such a conflict may still be condemned by the courts as violative of public policy which is always susceptible to broader interpretation than the express statutory provisions. Kaufmann & Widiss, the California Conflict of Interest Laws, 36 So. Calif. L. Rev. 186, 187 (1963). The fundamental policy is that a public office is a public trust created in the interest and for the benefit of the people. Public officers are obligated ... to discharge their responsibilities with integrity and fidelity ... They may not exploit or prostitute their official position for their private benefits. When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office and vitiate the trust reposed in them, and the public is injured by being deprived of their loyal and honest services. Terry v. Bender 143 CA2d 198, 206 (1956)."

And further in 40 Ops. Cal. Atty. Gen. 210, 212 (1962):

"It is also important to note that the California courts have traditionally predicated conflict of interest decisions on the dual basis of: (a) the statutory restrictions; and (b) the prohibition of sound public policy evolved from common law principles. See City of Oakland v. California Const. Co., 15 Cal2d 573, 576 (1940); Schaefer v. Berinstein, 140 CA2d 278, 290 (1956). Thus in Noble v. City of Palo Alto, 89 CA 47, 51 (1928) the court concluded that, 'a public officer is impliedly bound to exercise the powers

conferred on him with disinterested skill, zeal, and diligence... (emphasis added). Fidelity in the public officer must be maintained, and the laws does not permit a public officer to place himself in a position in which he might be tempted by his own private interest to disregard the interests of the public. See Stigall v. City of Taft, Cal. Sup. Ct. Dkt. No. SF20906 (Oct. 23, 1962); People v. Darby 114 CA2d 412, 425 (1952)."

This office has further pointed out that, "the general common law conflict of interest rule is not restricted to contractual relationships ... it strictly requires public officers to avoid placing themselves in a position in which personal interest may come into conflict with their duty to the public." 46 Ops. Cal. Atty. Gen. 74, 86 (1965).

The gist of the common law of conflict of interest is to prevent the doing of an official act where the official may have a direct or indirect interest in the outcome. The courts of this State have held that an interest may be so remote and speculative as not to create any conflict of interest. Hotchkiss v. Moran 109 CA 321, 323 (1930). What constitutes a remote and speculative interest is not clearly defined. For example, in People v. Darby, 114 CA2d 412 (1952) the court used language that might suggest that any interest that might affect an official's conduct creates a conflict. In Darby, the court, approving the instructions of the trial court, stated at page 435:

"...Whether the interest was direct or indirect, remote or contingent, the sum and substance of the three instructions read as a whole is that if the interest of the member is sufficient to cause him to be swayed in the slightest degree from his duty to the public, it is a violation of Section 1097 as well as 1011." (Emphasis added)

In the light of the language in Darby, extreme caution should be exercised in concluding that an interest is too remote."

In 59 Ops. Cal. Atty. Gen. 604 (1976) it is stated as follows:

"In a recent letter opinion of this office it was stated as follows regarding

the common law doctrine concerning conflicts of interest:

'One further point requires discussion. Prior to the enactment of the Political Reform Act of 1974, this office predicated decisions on noncontractual conflict of interest questions on the common law rule against conflicts. We have assumed the continuing viability of the rule as a cumulative test despite the 1974 initiative measure which covers both contractual and noncontractual matters. See 58 Ops. Cal. Atty. Gen. 345, 354-56 (1975). Such doctrine...strictly requires public officers to avoid placing themselves in a position in which personal interest may come into conflict with their duty to the public.'" 46 Ops. Cal. Atty. Gen. 74, 86 (1965)...See generally 26 Ops. Cal. Atty. Gen. 5 (1955).

Though one might urge that the Political Reform Act of 1974 has now preempted the common law doctrine against conflict of interest, and therefore that which is not specifically prohibited is now permitted, we would caution against such a conclusion for the reasons (1) that the courts have traditionally predicated their decisions on the dual basis of the statutes and the common law rule, See 58 Ops. Cal. Atty. Gen. 345, 354-56, supra, and (2) were a violation of the common law rule found to exist, such could form the basis of an allegation of willful misconduct in office within the meaning of Section 3060 et seq."

The foregoing was reaffirmed by the Attorney General in 67 Ops. Cal. Atty. Gen. 369 at 381 (1984).

In 70 Ops. Cal. Atty. Gen. 45 at 47 (1987) it is stated:

"The prohibition against a public officer having a conflict of interest in the performance of public duties has long been recognized in common law. The common law doctrine 'strictly requires public officers to avoid placing themselves in a position in which personal

interest may come into conflict with their duty to the public.' (46 Ops. Cal. Atty. Gen. 74, 86 (1965))

While this doctrine is subject to being abrogated by express statutory provisions, we have previously concluded that it is applicable where no statutory conflict exists. (67 Ops. Cal. Atty. Gen. 369; 59 Ops. Cal. Atty. Gen. 604; 58 Ops. Cal. Atty. Gen. 345).

Exceptions to the common law doctrine exist, such as the rule of necessity (See 67 Ops. Cal. Atty. Gen. 369), and the doctrine 'may usually be avoided by complete abstention from any official action with respect to or attempt to influence the transaction' (64 Ops. Cal. Atty. Gen. 795, 797 (1981)).

STATUTORY CONFLICT OF INTEREST
(Political Reform Act of 1974)

Government Code Section 87100 provides:

"No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

Government Code Section 87101 provides in pertinent part as follows:

"The fact that an official's vote is needed to break a tie does not make his participation legally required for purposes of this section."

Government Code Section 87103 provides in pertinent part as follows:

"An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on

the official or a member of his or her immediate family or on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more."

Individuals owning real property and having investments in the area affected by a rezoning decision do not constitute the public generally or a significant segment thereof. (April 6, 1977 3 FPFC 38)

Thus, although the effect on other residents on Orchard Avenue may be the same as the effect on Alan Brown, those people are not "the public generally".

California Administrative Code Title 2 Section 18702 adopted by the Fair Political Practices Commission provides:

"The financial effect of the governmental decision on an economic interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question."

The provisions for enforcement of the Political Reform Act of 1974 are contained in Government Code Sections 91000 et seq.

Under Section 91000 a person who knowingly or willfully violates any provision is guilty of a misdemeanor, and may be fined up to \$10,000.

Under Section 91001 the District Attorney is the civil prosecutor under the act.

Under Section 91001.5 the City Attorney is the civil or criminal prosecutor with respect to any violations occurring within the City.

Under Section 91003 any person residing in the jurisdiction may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of the act.

The court may in its discretion require any plaintiff other than the commission to file a complaint with the commission prior to seeking injunctive relief. The court may award to a plaintiff or defendant who prevails, his costs of litigation including reasonable attorneys fees.

This section provides that the court may restrain the execution of any official action in relation to which such violation occurred, pending final adjudication. If it is ultimately determined that a violation has occurred and that the official action might not otherwise have been taken or approved, the court may set aside the official action.

Section 91005.5 provides for civil liability.

Section 91007 provides that any person filing a civil action under Sections 91004 and 91005 must first file with the civil prosecutor a written request for the civil prosecutor to commence the action. The civil prosecutor must respond within 40 days as to whether or not he intends to file a civil action. If his response is in the affirmative and he files suit within 40 days thereafter, no other action may be brought unless the action brought by the civil prosecutor is dismissed without prejudice as provided in Section 91008. This section also provides that any person filing a complaint in a civil action must within 10 days thereafter serve a copy of the complaint on the Fair Political Practices Commission, or a notice containing certain information.

Section 91012 also authorizes the court to award attorneys fees to the prevailing party. It also provides that on motion of any party, a court shall require a private plaintiff to post a bond in a reasonable amount at any stage of the litigation to guarantee payment of costs.

In Downey Cares v. Downey Comm. Dev. Com'n. (1987) 196 CA3d 983, 242 CR 272 the city council adopted an ordinance which amended its redevelopment plan by a 3-2 vote. Opponents of the amendment obtained a writ of mandate invalidating the ordinance on the ground that councilman S who voted with the majority was disqualified to vote due to conflict of interest because he had a financial interest in the decision.

In Witt v. Morrow (1977) 70 CA3d 817, 139 CR 161 the Superior Court granted a declaratory judgment and order permanently enjoining a councilman from participating in decisions concerning a shopping center because of conflict of interest.

Madera City Council

Subject: General Plan Amendment, Bridge Crossing and Street Planning

Members of the Council:

I wish to offer the following general comments:

I appreciate the Council taking the time for the numerous meetings and hearings that have been held regarding this subject

I am very pleased with the fact that a wide cross section of the northwestern Madera community has rallied around this issue and has shown it so much attention and concern. Many residents of our community, representing several different streets within the same overall neighborhood, have given valuable input into this important subject.

In general, community members have worked together in designing alternate routes; in consulting, when possible, with the city staff; and in meeting often with Council members. In so doing, from them has emerged a single harmonious voice. This harmonious voice has expressed a common opinion: "Let us not rush into an unwise decision, but, instead, let us share in the traffic impacts and not unduly burden any one of our sub-neighborhoods."

As the preferred compromise, the community has called for a Schnoor realignment ("Hallmark") with a curved design and four-way stop intersections that would discourage rapid "highway-type"

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traffic; and would instead help distribute the traffic load through a variety of alternate routes (e.g., Schnoor, Riverview, Orchard, etc.).

To our dismay, the response to our joint community effort has been mixed. Although some City Council members have spent time and energy trying to be fair with us, a couple of Council members have not been honest and open-minded throughout the process. In fact, if one polled our community, he would find that most of its members feel that they have not been heard with true open-mindedness. The resulting disappointment is being felt not only by the homeowners on Schnoor, but also by the community at large. The cruel irony is that I am sure that you, as local officials, must have often said to yourselves: "I wish more citizens would become involved with our work." In this case, citizens did involve themselves--and, as a result, nothing changed. Not a single need was met.

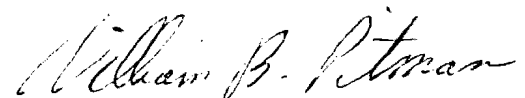
As the citizens who voted these representatives into office we must now ask ourselves why, in this matter, have they chosen to ignore our needs? Mayor Brown, an Orchard Street resident, rejected the compromise proposal that balanced the interests of all sub-communities involved reportedly because his primary concern was not overall fairness but "helping" Orchard, Williams and Willis streets. He reiterated this concern for his own immediate vicinity in a private meeting with community members. Can this be called impartiality? Planning Commissioner Scheidt,

when faced with a similar conflict of interest, elected to remove himself from the deliberations in order not to taint the final decision with even a hint of personal bias. Mr. Brown has not done the same.

Mr. O'Rourke ignores the adverse effects of concentrated traffic on Schnoor Avenue because he displays disdain for the area itself. Indeed, he sees no future in maintaining the established character of the Schnoor neighborhood. He has told me personally that he believes there is "no demand" for similar residences in the city of Madera. In fact, such demand does exist. I myself know of executives newly relocated to local companies who have searched for such a residential area--and searched in vain--because nothing suitable was available. What message is the City Council sending to such new participants in the Madera business community?: "GO LIVE AND SHOP IN FRESNO."

We believe that this is clearly the wrong message for our growing community to project. We urge you to reconsider the wide adverse impacts of the decision you are about to make.

Sincerely,



William B. Pitman

cc: Margaret Medellin
Robert Garibay
William Weber
Alan Brown
Pat O'Rourke
Axel E. Christiansen, City Attorney
Nicolai Pavlovich, City Administrator

June 30, 1989

MEMO TO: Nick Pavlovich

FROM: Gary Oberti *GO*

SUBJECT: Possible Conflict of Interest

This memo will confirm our conversation of yesterday concerning Mayor Allen Brown. Since the mayor lives on Orchard and is directly impacted by the General Plan Amendment in regard to a river crossing and street alignment, is he not in conflict of interest?

In several meetings with the mayor, he openly stated his protectionist attitude for the preservation of Orchard Street, the street on which he resides. In two of these meetings you were present and you may recall that we met after one of these meetings where we touched on this subject.

I am under the opinion that the democratic process has been flawed from the very inception of this General Plan Amendment, since the mayor was involved with the planning staff during the time the issue was before the planning commission.

I would appreciate a written response to the following two questions in regards to the river crossing.

1. Is Mayor Brown in conflict of interest?
2. Did the mayor influence the city planning staff?

GO/ps

cc: Allen Brown
Axel E. Christiansen

MADERA GENERAL PLAN

RESIDENTIAL

- Urban High Density: 12-13 dwelling units per acre
- Urban Medium Density: 8-10 dwelling units per acre
- Urban Low Density: 3-7 dwelling units per acre
- Residential Acreage: 4-7 dwelling units per acre

COMMERCIAL

- Neighborhood Commercial
- Central Commercial
- Service Commercial
- Highway Commercial
- Office Commercial

INDUSTRIAL

- Limited Industrial
- General Industrial

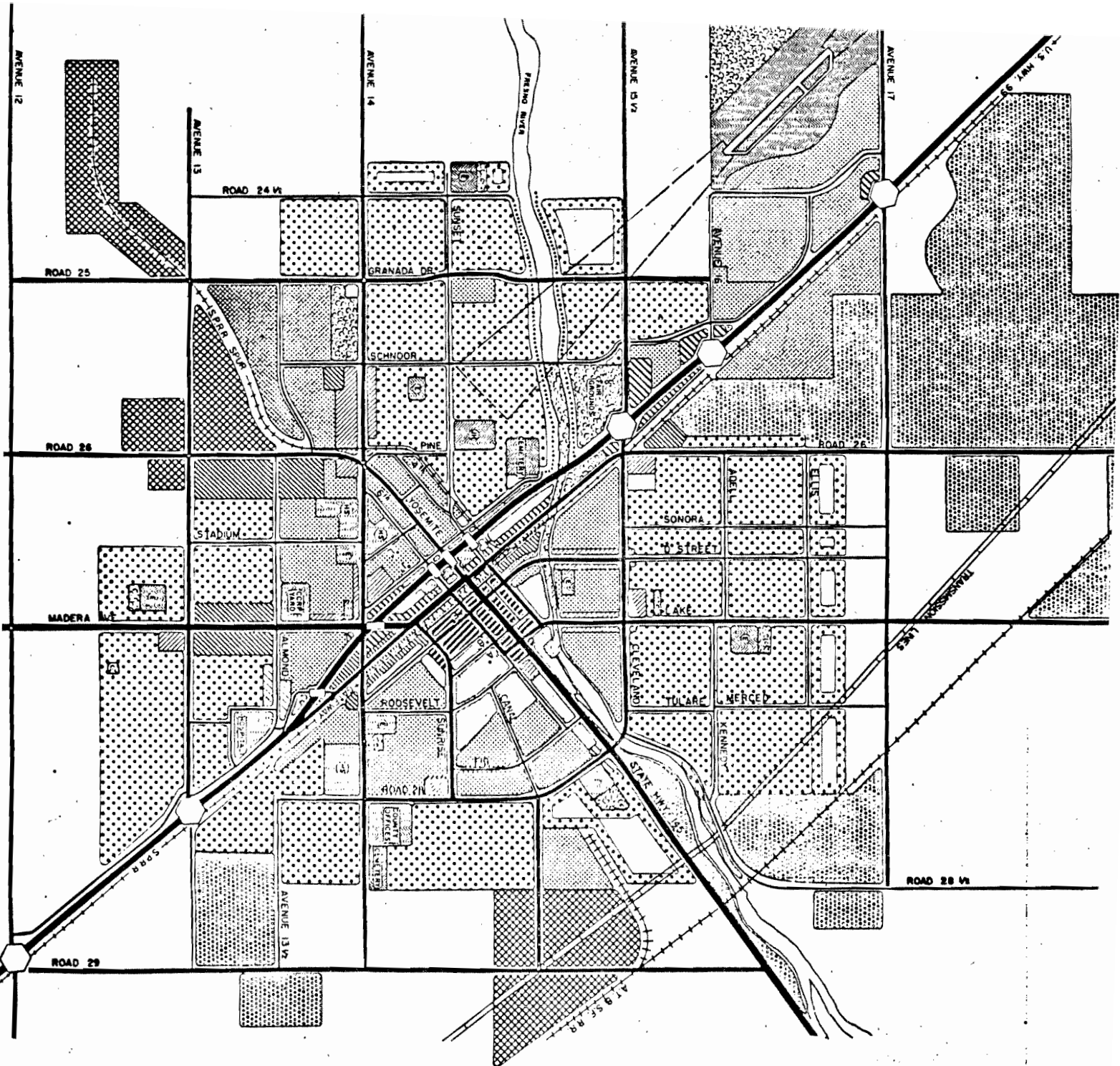
OTHER

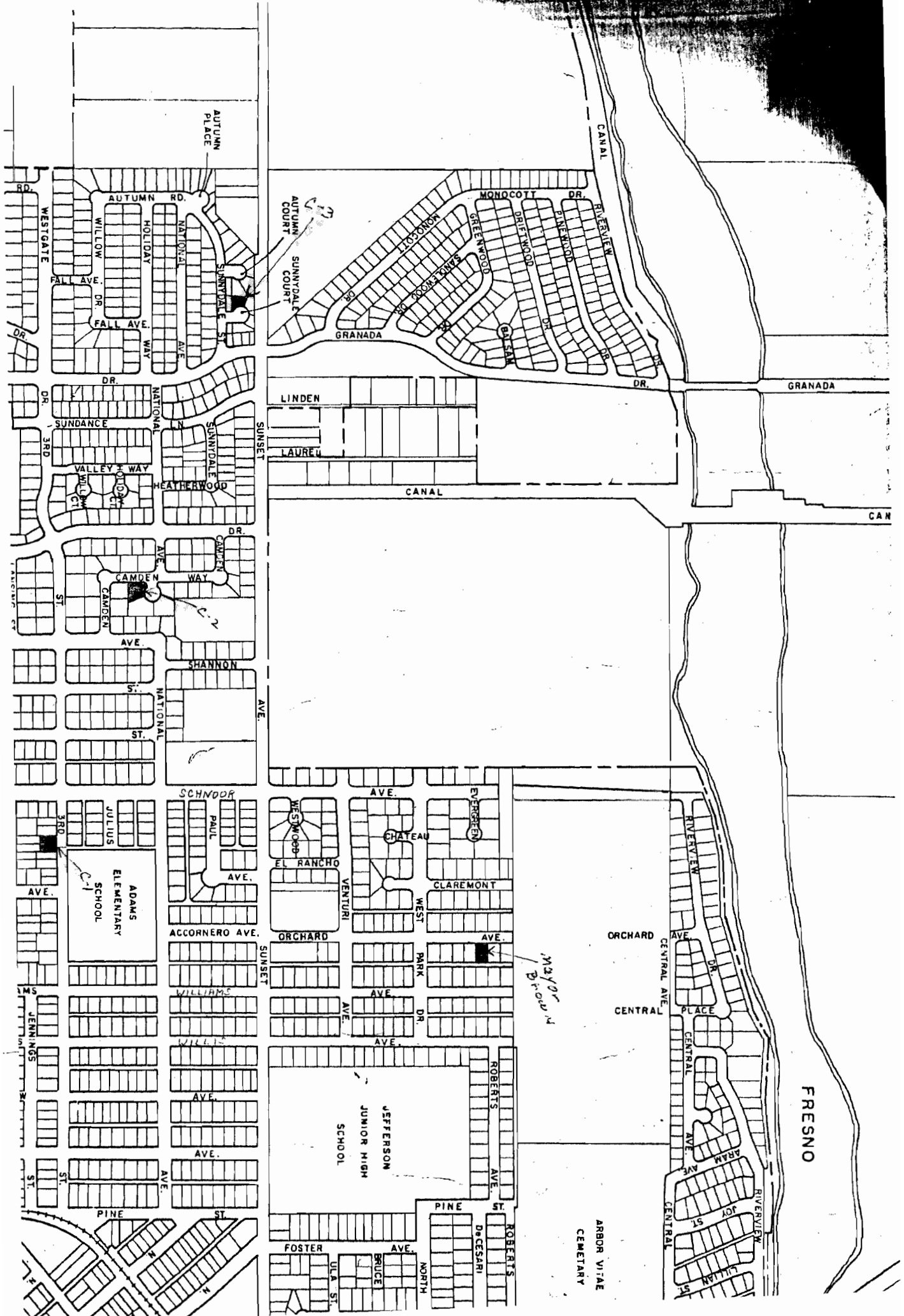
- Open Space Conservation
- Public Facility

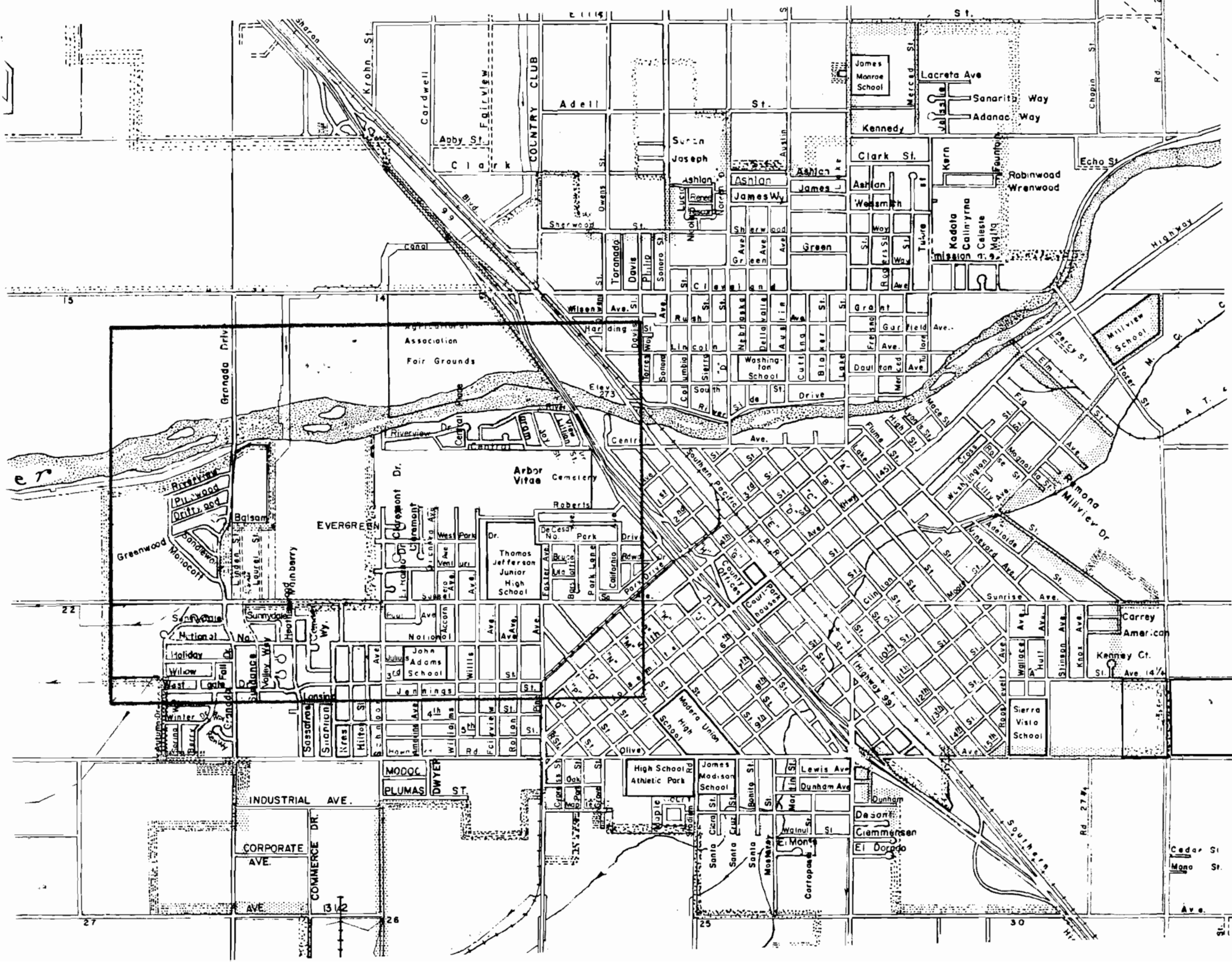
CIRCULATION

- Freeway, Interchange, and Grade Separation
- Major Street - primary primary road
- Collector Street - secondary secondary road
- Scenic Parkway

Notwithstanding to what may appear, references to the projects and purposes of the General Plan are intended to be general and illustrative only.









California Fair Political Practices Commission

July 18, 1989

Axel E. Christiansen
City of Madera
205 West 4th Street
City Hall
Madera, CA 93637

Re: Letter No. 89-422

Dear Mr. Christiansen:

Your letter requesting advice under the Political Reform Act was received on July 17, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
Kathryn E. Donovan
General Counsel

KED:plh

AXEL E. CHRISTIANSEN

ATTORNEY AT LAW
123 EAST FOURTH STREET
MADERA, CALIFORNIA 93638
TELEPHONE (209) 673-8084

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August 7, 1989

Ms. Margaret Ellison
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Re: Request for Opinion

Dear Ms. Ellison:

I am enclosing herewith a copy of a letter just received from Mr. Herbert E. Bartow relative to Mayor Brown, which is self-explanatory.

Apparently someone has advised Mr. Bartow that Mr. Brown allegedly made some statements, as outlined in the letter, which may or may not be accurate as to the conclusion reached.

Yours very truly,



AXEL E. CHRISTIANSEN

AEC:jan
Enclosure

cc: Mr. Herbert E. Bartow

HERBERT E. BARTOW, INC.

ATTORNEY AT LAW

123 EAST 4TH STREET

MADERA, CALIFORNIA 93638

TELEPHONE (209) 674-8588

August 7, 1989

Axel E. Christiansen
Madera City Attorney
205 West 4th Street
Madera, California 93637

Re: Conflict of Interest of
Mayor Alan Brown

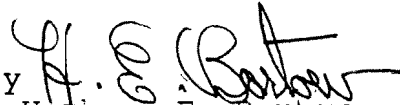
Dear Mr. Christiansen:

It has been brought to my attention by way of a transcript of a portion of the June 26, 1989 City Council meeting that Mayor Alan Brown stated that none of the alternative plans for a street alignment from the Fresno River South (of which there were approximately 10) would "help" his neighborhood, i.e. Orchard and Williams, and thus he favored use of Schnoor Street to route traffic from the Fresno River South.

It would be very much appreciated if you would forward this letter to the Fair Political Practices Commission to be added to the material which you earlier submitted to them with your letter of July 13, 1989.

Thank you in advance for your cooperation.

HERBERT E. BARTOW, INC.

By 
Herbert E. Bartow

HEB:kg



California Fair Political Practices Commission

August 29, 1989

Axel E. Christiansen
City Attorney
City of Madera
205 West 4th Street
Madera, CA 93637

Re: Your Request for Advice
Our File No. A-89-422

Dear Mr. Christiansen:

You have been authorized to seek advice on behalf of Mr. Alan Brown, Mayor of the City of Madera, regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. May Mayor Brown participate in the selection of a site for a bridge over the Fresno River?
2. May Mayor Brown participate in decisions relating to the alignment of collector streets for the bridge?

CONCLUSIONS

1. Mayor Brown may participate in decisions relating to the selection of a site for the bridge crossing even if the effect on his property is material, because the effect is the same as that on the public generally.
2. Mayor Brown may participate in decisions relating to the alignment of collector streets unless the decisions would increase or decrease the value of his property by \$10,000 or more.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

FACTS

According to the facts you have provided, the Madera City Council is contemplating a decision to construct another bridge across the Fresno River. The river bisects the city on its northerly side, and the need for an additional crossing has long been recognized. The council must decide on a location for the bridge and determine which street will be the major thoroughfare for traffic between the bridge and Sunset Avenue, the first major street south of the river.

The general plan adopted by the city provides for a collector street known as Schnoor Avenue to end at the river and a continuation of that street is depicted on the opposite side of the river. You indicate that this implies a Schnoor Avenue river crossing. Also you state that previously approved environmental impact reports show a crossing at Schnoor Avenue.

In connection with proposed amendments to the general plan, possible realignment of streets from the Schnoor Avenue crossing, or possible relocation of the crossing, have been discussed. The planning commission has made no recommendation in the matter and has forwarded the matter to the city council for consideration.

The location of the bridge, and particularly the issue of designating a collector street to carry traffic to Sunset Avenue, have generated a great deal of controversy. The current residents of Schnoor Avenue are adamant against using their street as the collector street as are the residents who live on streets suggested as alternate or additional collector streets, such as Shannon Avenue, Mainberry Drive and Orchard Avenue.

Mayor Brown lives on Orchard Avenue, which is two blocks east of Schnoor Avenue and approximately five and a half blocks south of the river. The mayor's investment in his residence is in excess of \$1,000. Three other council members live in the same general area, although, according the map provided, their residences are located south of Sunset Avenue.

You indicate that the mayor has made it known that he favors the river crossing at Schnoor Avenue and the continued maintenance of Schnoor Avenue as the collector street. Allegations are now being made that the mayor has a conflict of interest because he resides on Orchard Avenue. Some members of the community have requested that he disqualify himself from participating in the decisions. You have attached a letter and legal analysis from Herbert E. Bartow, a Madera attorney, a comment addressed to the council from William B. Pitman, and a memorandum from Gary Oberti.

ANALYSIS

The following advice relates only to future decisions regarding the location of a proposed crossing and alignment of collector streets. We cannot advise the mayor with respect to any past conduct in which he might have engaged prior to seeking this advice. (Regulation 18329(c) copy enclosed.)

Section 87100 prohibits public officials from making, participating in, or using their official position to influence any governmental decision in which they know or have reason to know they have a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his or her immediate family, or on "any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more." (Section 87103(b).)

An official makes a governmental decision when he votes, commits his agency to a course of action, enters into a contract, or appoints someone. (Regulation 18700(b), copy enclosed.) The city council will be voting on the location of the river crossing and on the designation of a collector street for traffic to and from the bridge. Therefore, if the mayor participates in the actions of the city council concerning the river crossing, it is clear that he will be making a governmental decision. He is a public official under the Act. (Section 82048; Regulation 18700(a).)

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however, certainty is not required. (Downey Cares v. Downey Development Com. (1987) 196 Cal.App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal.App.3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).) The Act seeks to prevent more than actual conflicts of interest; it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

You indicate in your letter that it is not clear whether the location of the bridge and the street alignment will have any foreseeable financial effect on the mayor's property. You believe that the effect is uncertain because of the distance of Orchard Avenue from possible sites, existence of other streets connecting to Sunset Avenue south of the river and because Orchard Avenue does not have direct access to the river.

Whether the decision will have a foreseeable effect on the mayor depends upon whether there is a substantial likelihood that the decisions of the city council will affect the mayor's property. The decisions involve a possible relocation of the bridge and the possible realignment of the streets with respect to the designation of a collector street for traffic from the bridge to Sunset Avenue. Since Orchard Avenue could be a possible choice for a collector street, it is foreseeable that the decisions may have a financial effect on the mayor's property.²

Material Financial Effect

Once it is determined that a decision may have a financial effect upon the mayor, it is necessary to determine whether the effect of the decision is material. You have indicated that the distance between the mayor's property and the riverbank at Schnoor Avenue is approximately 1700 feet, and that this point is the closest foreseeable river crossing location in relation to the mayor's property. Regulation 18702.3 (copy enclosed) provides, in part, as follows:

(a) The effect of a decision is material as to real property in which an official has a direct, indirect or beneficial ownership interest (not including a leasehold interest), if any of the following applies:

* * *

(3) The real property in which the official has an interest is located outside a radius of 300 feet and any part of the real property is located within a radius of 2,500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the decision and the decision will have a reasonably foreseeable financial effect of:

(A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or

(B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

Regulation 18702.3 (a)(3).

² We have received the letter from Mr. Bartow dated August 7, 1989. We cannot determine the accuracy of remarks that the mayor may have made concerning the potential effect on his property. However, those statements are not determinative of the conflict-of-interest issues.

Therefore, with respect to the choice of Schnoor Avenue as the location of the bridge across the Fresno River, the mayor may participate in site selection unless the decision will increase or decrease the fair market value of his property by \$10,000 or more.

Whether to follow the existing general plan designation of Schnoor Avenue as the primary collector street for bridge traffic or to in some way divert the traffic to other streets is a separate question. Here, there are some indications that the street where the mayor resides, Orchard Avenue, might experience an increase in traffic depending upon which way the streets are aligned from the bridge. Regulation 18702.3(c) states that the appropriate measure for materiality when there is no specific subject property from which to measure is the test in Regulation 18702.3(a)(3), set forth above. Therefore, the mayor may participate in decisions relating to the street alignment unless it will affect the fair market value of this property by \$10,000 or more.

"Public Generally" Exception

Even if it is ascertained that the effect of the decision in question will be material, the mayor may still be able to vote if the effect on his property is not distinguishable from the effect on the public generally. (Section 87103.) Regulation 18703 (copy enclosed) provides, in part:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public.

The "public" is all the persons residing, owning property, or doing business in the jurisdiction of the agency in question. (In re Legan (1985) 9 FPPC Ops 1, copy enclosed.) In the case of the city council, this would be the entire city. The Commission has never adopted a strict arithmetic test for determining what constitutes a significant segment of the public. However, in order to apply the public generally exception, the population affected must be large in number and heterogeneous in nature. (In re Ferraro (1978) 4 FPPC Ops 62, copy enclosed.)

It is true, as you have suggested, that the construction of a bridge will potentially have an impact on a large segment of the public west of U.S. 99 and south of the Fresno River. Information supplied by your staff in a telephone conversation of August 21st

indicates that the area benefitting from the bridge constitutes a significant segment of the population of Madera. The current population of the city is approximately 27,301. The current population of the area served by the new bridge is estimated to be about 6,700.³ Furthermore, the area appears to be largely residential as is the mayor's property. Therefore, selection of a site for the bridge would not appear to affect the mayor in a manner different from the public generally.

However, it would appear that those individuals residing or owning property on streets used as collector streets for bridge traffic are affected differently, and the number of individuals affected by any one choice would not be large. Thus, in regard to decisions about the configuration of collector streets, the public generally exception would not apply.

If you have any questions regarding the above, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

KED/MWE/aa

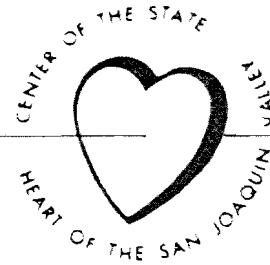
Enclosures

³ The estimate is based upon a conservative prorated update of 1980 census data for the area extending south of river to Howard Road and between the two current bridges at Granada and Highway 99. This estimate does not include persons residing east of Highway 99 who may use the bridge to reach industrial and commercial areas south of the river. Nor does it include currently planned and proposed residential developments located immediately north and south of the river in the area where the bridge would be located.

City of Madera

CITY HALL
205 WEST 4TH STREET

MADERA, CA 93637



July 13, 1989

DEPARTMENT Legal
(209) 623-8084

Ms. Kathryn Donovan
Legal Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Re: Request for Opinion

Dear Ms. Donovan:

On July 7, 1989, the City Council of the City of Madera, and Mr. Alan Brown, Mayor of the City of Madera, authorized and directed me to submit a request for an opinion from your offices relative to an alleged conflict of interest of Mayor Alan Brown.

Mr. Alan Brown resides at 817 Orchard Avenue, Madera, California 93637. He is retired.

The pertinent facts relative to this inquiry are as follows:

The City of Madera is a general law city located approximately 22 miles north of Fresno in the San Joaquin Valley. The Fresno River bisects the City on its northerly side, the river being traversed on the east side of U.S. 99 by three bridges; there is a bridge over U.S. 99, and on the west one river crossing over Granada Drive.

The need for an additional river crossing to the west of Highway 99 between the highway bridge and Granada Drive has long been recognized and the City has, in adoption of its General Plan, provided for a collector street known as Schnoor Avenue to end at the river and a continuation of that street depicted on the opposite side of the river, implying a Schnoor Avenue river crossing. Environmental impact reports approved many years ago in fact show a crossing of the river at Schnoor Avenue location, but for whatever reason the matter has now been raised for further consideration by the

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Ms. Kathryn Donovan
July 13, 1989
Page Two

Planning Commission and the City Council. Maps depicting the general area involved and the specific area in question, and the map from the approved EIR for the General Plan are enclosed for your edification.

In connection with proposed amendments to the City of Madera General Plan, possible realignment of streets from the Schnoor Avenue crossing, or possible relocation of the crossing at an area other than at Schnoor Avenue, have been discussed, both at the Planning Commission and City Council level. The Planning Commission failed to make any recommendation and the matter forwarded to the Council for its consideration.

The issue of streets connecting from any Fresno River crossing to the next major street in the city, to wit Sunset Avenue, has created a great deal of controversy, the residents on Schnoor Avenue being particularly adamant about utilization of their street (which is already designated as the collector street) as the major street from the river crossing to Sunset Avenue. The same attitude has prevailed among other citizens in connection with traffic along their streets, e.g. Shannon Avenue, Mainberry Drive and Orchard Avenue, although Orchard could not be extended directly across the river.

Mayor Brown lives on Orchard Avenue, which is two blocks east of Schnoor Avenue and approximately five and a half blocks south of the river. Three other council members live in the same general area and the location of the residences of the mayor and the three other council members are earmarked on the attached specific map, location "M" being Mayor Brown's property, and numbers 2, 3 and 4 indicating the residences of other council members. The location of the property of the fifth council member is not relevant.

Apparently Mayor Brown has made known his position favoring the river crossing at Schnoor Avenue and the continued maintenance of Schnoor Avenue as a collector

Ms. Kathryn Donovan
July 13, 1989
Page Three

street. As a result, allegations have been made by parties supporting a change in the Schnoor Avenue status and possible relocation of the river crossing that Mayor Brown has a conflict of interest in considering either the location of the bridge, or possible changes in the designation of streets onto which traffic may flow if and when a bridge is constructed, whether it be aligned with Schnoor Street or at some other location, because he resides on Orchard Avenue.

Some residents of the Schnoor Avenue area, including an attorney, have communicated with the Council. I am enclosing a copy of a letter of July 3, 1989 from Mr. Herbert E. Bartow, Attorney at Law, setting forth his contentions, along with his research on the subject, and letters from Mr. William Pitman and Gary Oberti. The Mayor denies any specific protectionist attitude regarding Orchard Avenue, stating his concern is for the best solution to the impact of a bridge on all streets in the area feeding onto Sunset Avenue.

As stated and shown on the maps, the Mayor owns his residence at 817 Orchard Avenue. His investment in his residence is more than \$1,000.00 in value. Presumably property of Council Members 1, 2 and 3, whose properties are marked on the specific map, constitute investments greater than \$1,000.00.

It is not known what, if any, financial effect there may be on any real property of the mayor or other Council Members in connection with the ultimate decision concerning the location of the bridge or streets leading from it to the south, than can be or is distinguished from the effect on the public generally in the area where the improvements are ultimately placed.

Ms. Kathryn Donovan
July 13, 1989
Page Four

It may or may not be reasonably foreseeable that the ultimate location of a bridge over the Fresno River and alignment of streets to the south will have any financial effect on property located in the area in question, i.e. property values may increase because of improved access to newly developed commercial areas or be adversely affected as a result of traffic impacts. It is argued that it is not reasonably foreseeable that there will be any financial effect on Orchard Avenue because of its distance from possible sites, existence of other streets connecting to Sunset south of the river and because Orchard Avenue, as contrasted with Schnoor, Mainberry and Shannon, does not have direct access to the river.

However, assuming a financial affect on Mayor Brown's property, in which it is conceded he has a financial interest, it is not reasonably foreseeable that there would be a material financial effect, i.e. an increase or decrease in the fair market value of the property by \$10,000.00 or a lesser amount equal to .005% of an effect of one thousand dollars or more.

Also, assuming a financial effect upon Mayor Brown's property interests, it appears that such effect is not distinguishable from the effect on the public generally in that the nature of the decisions involved here concern the general public in the entire neighborhood west of U.S. 99 and south of the Fresno River. If the matter at issue involved zoning, or conditional use, or taxes or similar impacts upon property near a public official's property, such actions would be distinguishable from the effect on the general public, but such appears not to be the case in decisions involving a substantial quadrant of the City.

Based on the foregoing and your analysis thereof, would you please advise whether Mayor Brown may participate in any